*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.2056 OF 2004

%07-09-2004

P.NARAYANA AND OTHERS

..PETITIONERS

Vs.

$ STATE OF ANDHRA PRADESH, REP.BY ITS SECRETARY, MINISTRY OF MUNICIPAL ADMINISTRATION, SECRETARIAT, HYDERABAD AND OTHER

..RESPONDENTS

! COUNSEL FOR PETITIONERS : SRI KISHORE RAI

^ COUNSEL FOR RESPONDENT 1: G.P. FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT

^ COUNSEL FOR RESPONDENT 2: Ms.JYOTHI KIRAN, STANDING COUNSEL FOR M.C.H.

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>HEAD NOTE:

?CASES REFERRED:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO
WRIT PETITION NO : 2056 of 2004

Between:

1 P. Narayana S/o.Late P.Anjaiah,
R/o. 5-1-373, Ghasmandi Secunderabad.
2 P. Narender S/o.Late P.Anjaiah
R/o. 5-1-373, Ghasmandi Secunderabad.
3 P. Nagaraju S/o.Late P.Anjaiah
R/o. 5-1-373, Ghasmandi Secunderabad.

..... PETITIONERS

AND

1 State of Andhra Pradesh, rep., by its Secretary, Ministry of Municipal Administration, Secretariat, Hyderabad.
2 Municipal Corporation of Hyderabad rep., by its Commissioner Tank Bund Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order to issue an appropriate writ of mandamus, direction or order declaring the Letter dated 2.1.2004 bearing No.01054/CSC/TP7/03-12, as arbitrary, illegal, null and void and without jurisdiction and issue a consequential direction to the respondents to approve the building plan of the petitioners for construction of ground plus 3 upper floors in premises bearing 2-3-

520/17 and 2-3-520/18, bearing Plot No.7, situated at Kachi Colony, Nallagutta, Secunderabad admeasuring 500m sq.yards in Survey Nos.49,50 and 51 of Bholakpur Village, Secunderabad.

Counsel for the Petitioners: MR.KISHORE RAI

Counsel for the Respondents: GP FOR MUNCIPAL ADMINISTRATION & URBAN DEVELOPMENT

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.2056 OF 2004

ORDER:

The petitioners herein purchased house bearing plot No.7 (Premises Nos.2-3-520/17 and 2-3-520/18) admeasuring 500 square yards in Survey Nos.49, 50 and 51 of Bholakpur village from one Smt Manjula Devi Surana under registered sale deed dated 03.05.2003. This property originally was allotted by a Cooperative Society – DV Colony Cooperative Society (the Society, for short) to one Durga Singh, who sold to R.Kumar and R.Mallesh, who in turn sold the property to the vendors of the petitioners. The petitioners allege that the said property was in dilapidated condition and therefore they intended to construct residential building and that they made an application to second respondent after obtaining No Objection Certificate from the Office of the District Collector, Hyderabad. They also allege that though the application was made on 19.11.2003, the second respondent neither approved nor rejected the plan within thirty days and therefore the petitioners commenced construction, having regard to Section 437 of the Hyderabad Municipal Corporation Act, 1955 (the H.M.C. Act, for brevity), which lays down that if the permission is not rejected within thirty days, the permission is deemed to have been granted. Be that as it is, the petitioners allege that when they commenced construction, the second respondent sent a communication bearing No.01054/CSC/TP7/03-12 dated 02.01.2004 refusing building permission for construction of residential building comprising ground plus three upper floors. The petitioners assailed the same on the ground that it is *mala fide*, illegal and arbitrary.

The Chief City Planner filed counter affidavit on behalf of second respondent stating that the property claimed by the petitioners is covered

by approved layout of Society covered by Survey Nos.49, 50 and 51 at Nallagutta, Secunderabad. The layout permit No.140/69 dated 27.08.1987 was released as per Municipal Corporation of Hyderabad (Layout) Rules, 1965 (the Layout Rules, for short), on execution of guarantee by the Society for providing amenities as per specifications prescribed in the Rules. The Society has not provided the amenities in spite of several reminders. A decision is taken by Municipal Corporation of Hyderabad (M.C.H.) not to grant any permission in the said layout, as till today the Society is not having full-fledged amenities. It is also stated that the M.C.H. granted permissions to many plots based on undertaking given by the Society from time to time to provide all amenities. The petitioners submitted application on 19.11.2003 along with No Objection Certificate issued by the District Collector. The Corporation issued a letter to the petitioners directing not to proceed with any type of construction till the permission is obtained and ultimately the permission was refused on 02.01.2004. The allegation made by the petitioners that the M.C.H. deemed to have sanctioned permission under Section 437 of the Act is denied. It is further stated that unless the layout is developed as per standards and specifications, no permission can be granted. The Society has not complied with the conditions for providing amenities and did not extend the bank guarantee in spite of several requests made by M.C.H. Though initially the M.C.H. granted permissions for construction to many plots based on the undertaking given by the Society from time to time, since the Society failed to provide amenities, the respondent M.C.H. is not granting any permission for construction of houses. It is further stated that the Society has changed layout pattern without obtaining a revised layout. The plot numbers allegedly owned by the petitioners are not tallying as per the approved layout pattern. The matter came up before this Court at interlocutory stage, but the learned counsel for the petitioners and the learned Standing Counsel for M.C.H. requested the Court to hear the matter finally. The matter was heard finally and is being disposed of at interlocutory stage.

The learned counsel for petitioners Sri Kishore Rai submits that the action of the M.C.H. in refusing to grant permission on the ground that the Society failed to furnish bank guarantee is illegal and arbitrary. He would urge that for the lapses on the part of the Society, petitioners who purchased the plots for valid consideration cannot be denied for building permission. He would urge that when once the layout is approved by the M.C.H, there is no such power to reject the application of the petitioners for building permission. The layout was approved in

the year 1987 and after lapse of sixteen years, the M.C.H. cannot reject the building permission on the ground that for want of extension of bank guarantee, the layout has been lapsed. He would also urge that the demand made by M.C.H. for the amounts covered by bank guarantee is not authorized in law. The petitioner also contends that when admittedly the M.C.H. granted permission to other plot owners, denial of the same to the petitioners would amount to discrimination violating Article 14 of the Constitution of India.

The learned Standing Counsel for M.C.H. Ms.Jyothi Kiran submits that as per the Rules, unless and until final layout is approved, no Society can sell the plots and no person can claim the building permission. He placed reliance on the said Rules as well as Section 388 of the H.M.C. Act. She also submits that though initially M.C.H. granted permission to some of the plot owners, M.C.H. has stopped issuing permissions and therefore the question of discrimination does not arise.

The only point that arises for consideration is whether the M.C.H. was justified in refusing to approve the proposed construction of ground plus three upper floors owned by the petitioners?

The petitioners made application on 19.11.2003. By impugned order dated 02.01.2004, the permission for the same was refused with the following reasons as disclosed in the impugned order.

1) The D.V.Colony layout was approved in permit No.140/69, Dt:27.8.87, based on the Bank Guarantee No.HMNR/BG/Dev/37/1, Dt:27.8.87, for Rs.12,55,000/- the Bank Manager of Allahabad Bank, has informed that the Bank Guarantee has been lapsed. Inspite of several requests made by the M.C.H, the society has not extended the Bank Guarantee nor remitted the said amount towards Developmental and further not provided the amenities. Therefore, the Developmental works could not be taken up in the said colony. Since, the society has failed to carryout the developmental works a decision was taken by the M.C.H. not to grant any building permissions in the said layout. Since, then no building permissions are being considered in the entire D.V.Colony layout since 1987.
2) As per the approved layout, the proposed site under reference is falling under plot No.9,10 & 11, whereas as per the building plans submitted for the plot No.17 & 18. It is noticed that the entire pattern of the approved layout has been changed.
3) As per the said layout and as per the link documents, submitted by you a 30'-0" should be existing in front of the proposed site, whereas the width of the existing road is 25'-6" to 27'-0", hence the plot width are not tallying with the said layout.
4) The orientation of the proposed plot is also not tallying.
5) The proposed plot is sub-divided portions without obtaining sub-division approval u/s 388 of H.M.C. Act.

The building permission was refused on the ground that i) in spite of several requests by M.C.H, the Society has not extended the bank guarantee nor remitted the amount; ii) the proposed site falls under plot numbers 9, 10 and 11, whereas the petitioners sought building permission in respect of plot numbers 17 and 18 and it is noticed that the approved layout has been changed; iii) the proposed plot is subdivided without obtaining prior permission under Section 388 of the H.M.C. Act, in such a manner that the orientation of the plot is not tallying and that when there is a 30' wide road as per the layout, but the width of the road in the proposed site is only 25'-6" to 27'.

Whether the reasons given by M.C.H. are sustainable? The answer must be in the affirmative and the reasons are as follows.

1) Furnishing of extension/bank guarantee by D.V.Colony Society

Section 388 of the H.M.C. Act lays down that every person, who intends to divide land into building plots or who intends to make or layout private street shall give notice of such intention to the Commissioner along with plans and sections showing the situation and boundaries of the land and the site of the private street. The application or written notice of intention to layout the land shall be accompanied by copy of the title deeds, urban land ceiling clearance, an undertaking to pay drainage and betterment charges as fixed by the Commissioner from time to time. After receiving the notice under Section 388 of the H.M.C. Act, the Commissioner may call for further particulars and consider the application in accordance with Sections 389 to 393 of the H.M.C. Act. The approval for layout the land is granted under Section 391(1) of the H.M.C. Act subject to conditions and under Section 392(1) of the H.M.C. Act, no person shall sell any land whether undeveloped or partly developed for building until expiration of sixty days from delivery of a notice under Section 388 of the H.M.C. Act or such time as may be fixed by the Commissioner under Section 391(1) of the H.M.C. Act.

The Government of Andhra Pradesh in exercise of rule making power under Section 585(1) of the H.M.C. Act made Municipal Corporation of Hyderabad (Layout) Rules, 1965. At the time of applying for layout, the applicant has to deposit the entire costs of works, namely, construction of roads, laying sewers and underground storm water drains etc. The applicant is, however, given an option to furnish a bank guarantee in Appendix 'E' (See Rule 18 of the Layout Rules).

If the Commissioner is satisfied that the application contains all particulars, may communicate the conditions and modifications, subject

to which the layout is to be considered for approval and also inform him estimated cost of development and provision for public amenities. The applicant has to carry out the works according to such specifications within twelve months from the date of receipt of provisional sanctioned layout. That is the purport of Rules 14,16 and 17 of the Layout Rules. After the completion of the developmental works and provision of amenities, only the Commissioner shall accord final approval for the layout. Further as per Rule 21 of the Layout Rules, an applicant or owner of the layout is prohibited from selling or transferring the land as sites for construction of buildings for residential or non-residential or industrial purposes until all the provisions of Rules 13 to 20 of the Layout Rules are complied with to the satisfaction of the Commissioner. Therefore, any applicant for a layout cannot sell any plot based on the provisional layout.

The petitioner does not deny that DV Colony Society was only given provisional approval for their layout. Unless and until the developmental works are completed to the satisfaction of the Commissioner, the Society could not have sold the plots. The fact that Society went on giving undertaking to M.C.H. to that effect, would show that the developmental works are not completed and therefore M.C.H. was justified in rejecting the application of the petitioners on the ground that bank guarantee is not extended.

The learned counsel for the petitioners contends that basing on the provisional layout the Society sold the plots, that purchasers approached the M.C.H. and obtained permission and therefore the petitioners cannot be subject to discrimination. This submission is devoid of any merit. Illegality may beget illegality but illegality cannot induce a Mandamus. The mere fact that M.C.H. committed illegality in sanctioning building permission in respect of an area where there is no final layout as per Rule 19 of the Layout Rules, cannot be a ground for issuing Mandamus to further ordain commission of another illegality. A Mandamus shall not be issued from this Court to compel any authority to act contrary to law or to act in contravention or ignorance of law.

2) Discrepancy in the distinction of the plots

The permission was rejected also on the ground that there is discrepancy in the plot numbers claimed by the petitioners and that the plots are subdivided without permission of M.C.H. under Section 388 of the H.M.C.Act. The petitioners have not offered any explanation with regard to these grounds in his affidavit nor any submission made by the learned counsel for the petitioners. Therefore, I do not see any illegality

on the part of the M.C.H. in rejecting the application on these grounds also.

For the above reasons, this Court holds that the impugned action of the M.C.H. in rejecting building permission is unexceptionable. It is however open to the petitioners to make appropriate application after all the defects pointed out by the impugned order are rectified either by themselves or by D.V.Colony Society. In this writ petition, no relief can be granted to the petitioners.

The writ petition, with the above observations, is disposed of.

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(V.V.S.RAO,J)

07.09.2004.

Note: L.R.Copy be marked.
(By Order)
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To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1. The Secretary, Ministry of Municipal Administration, State of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2. The Commissioner, Municipal Corporation of Hyderabad, Tank Bund Road, Hyderabad.
3. 8 LR copies.
4. Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
5. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.
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